

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

MFA.No. 65 of 2005()

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WCC.35/2002 of W.C.C.,ERNAKULAM  
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APPELLANT:

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ALIBABA, PROPRIETOR,  
WOOD TECH, MUDALIYARBHAGAM,  
KOCHI-5.

BY ADV. SRI.T.I.DANIEL  
SRI.DILIP MOHAN

RESPONDENTS:

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1. THE COMMISSIONER,  
WORKMENS COMPENSATION, COLLECTORATE BUILDING,  
KAKKANAD.
2. M.G.ANTONY,  
S/O.M.A.GEORGE, MAKKINIKKATTU HOUSE,  
KUMBALANGI, ERNAKULAM.

BY GOVERNMENT PLEADER  
SRI.B.N.SHIVSANKAR  
SRI.JOSE TOM C. KANDATHIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.PADMANABHAN NAIR . J.**

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**M.F.A No.65 of 2005**  
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**Dated this the 13<sup>th</sup> day of June 2007**

**JUDGMENT**

The opposite party in W.C.C 35 of 2002 on the file of the Commissioner for Workmen's Compensation ( Deputy Labour Commissioner) Ernakulam is the appellant in this M.F.A. The 2<sup>nd</sup> respondent in W.C.C 35/2002. Sri. Antony M.G. filed application under Section 22 of the Workmen's Compensation Act claiming compensation alleging that he sustained employment injuries. It was averred that he was employed in the appellant's establishment and he sustained injuries during the course of his employment. It was averred that due to the accident two of his fingers were lost. The appellant appeared and filed an objection contending that the 2<sup>nd</sup> respondent was not his employee. It was contended that till September 1992 the appellant was working in a gulf country and came back to India on 11-9-1992. Thereafter he started a workshop for wood works According to him the 2<sup>nd</sup> respondent was a freelance carpenter and he approached the appellant seeking some space for doing his own work. According to the appellant he allowed the 2<sup>nd</sup> respondent to make furniture on payment of rent. The appellant was doing his own work. The fact that the respondent met with accident on 8-6-2001 was admitted. The 2<sup>nd</sup> respondent filed rejoinder reiterating his contention that since 1996 he was working as a supervisor

and doing other works for the appellant. The 2<sup>nd</sup> respondent gave evidence as AW1.Ext.A1 & A2 were proved and marked. . Two witnesses were examined as AW2 & AW3 on the side of the respondent. The appellant did not appear and cross-examine the witnesses of the 2<sup>nd</sup> respondent. He also did not adduce any evidence. So the Deputy Labour Commissioner passed an order in the absence of the appellant. Challenging that order this M.F.A. is filed.

. It is an admitted fact that the 2<sup>nd</sup> respondent appeared in person and he had not engaged a lawyer of his choice. The specific case put forward by the appellant was that the 2<sup>nd</sup> respondent was not his employee. When the appellant filed objection the 2<sup>nd</sup> respondent herein filed an application for amendment and he had filed a rejoinder also. According to the appellant after receiving his objection he was informed by the Commissioner that the case will be posted for evidence and he will be informed about the next posting date of the case. But he did not receive any notice and hence failed to appear. I do not propose to probe further into the matter, but considering the nature of the contentions raised I am of the view that it is only just and proper that the appellant be given an opportunity to contest the matter by cross-examining AW1 to AW3 and also to adduce evidence. For that purpose the case has to go back .

In the result, the M.F.A is allowed. The order passed by the Deputy Labour Commissioner on 24-3-2003 allowing the claim petition of the 2<sup>nd</sup> respondent in this M.F.A is hereby set aside. Deputy Labour Commissioner is directed to take W.C.C. 35/2002 back to file and dispose of same afresh after giving reasonable opportunity to both sides to adduce evidence. In case a request made by the appellant to cross-examine AW1 to AW3 the same shall be considered by the Deputy Labour Commissioner and dispose of in accordance with law. I also make it clear that it is open to the parties to amend the pleadings to adduce further evidence if so advised. The parties shall appear before the Workmen's Compensation Court on 17<sup>th</sup> July 2007.

sd/-

**K.PADMANABHAN NAIR,JUDGE**

**es**